

CERTIFIED COPY

# United States Court of Appeals For the First Circuit

No. 05-1084  
DC No. 04-cv-12017

FRANKIE GARNER,  
Petitioner - Appellant,

v.

LOIS RUSSO, SUPERINTENDENT, SBCC,  
Respondent - Appellee.

## ORDER OF COURT

Entered: March 8, 2005

This court has docketed petitioner-appellant's appeal from the denial of his petition for writ of habeas corpus under 28 U.S.C. §2254. The case cannot go forward unless a certificate of appealability issues. 28 U.S.C. §2253. In accordance with Local Rule 22.1(b), a request for a certificate of appealability must first be sought in the district court.

This court has received appellant's request for a certificate of appealability from the district court and motion to proceed in forma pauperis. Accordingly, we transmit this pleading to the district court for a ruling forthwith. Copies of the district court's ruling shall be forwarded to this court.

We further order petitioner-appellant to file a status report in this court by April 1, 2005 and *every thirty days thereafter*, advising us of the status of the application for a certificate of appealability. We further order petitioner-appellant to inform us immediately once the district court reaches a decision on the application for a certificate. If a status report is not filed by **April 1, 2005**, and at thirty-day intervals thereafter, this appeal may be dismissed for want of diligent prosecution.

By the Court:  
Richard Cushing Donovan, Clerk

By: MARGARET CARTER  
Chief Deputy Clerk

CERTIFIED COPY  
I HEREBY CERTIFY THIS DOCUMENT  
IS A TRUE AND CORRECT COPY OF  
THE ORIGINAL ON FILE IN MY OFFICE  
AND IN MY LEGAL CUSTODY.  
Certified Copies: Honorable Edward F. Harrington, William Ruane, Acting Clerk,  
USDC and Mr. Garner, Ms. McLaughlin]

FIRST CIRCUIT COURT OF APPEALS

BOSTON, MA

By: E Harrington Date: 3/8/05

**CAP**

DC No. 04-12017 FILED  
No. 05-1084 (Appeals Clerk's Office)

**COPY**

FRANKIE GARNER,  
2005 MAR - A Petitioner, Appellant,

2005 MAR -2 P 1:11

FILED IN CLERKS OFFICE  
US COURT OF APPEALS  
FOR THE FIRST CIRCUIT

U.S. DISTRICT COURT  
DISTRICT OF MASS

LOIS RUSSO, Superintendent,  
Souza-Baranowski Correctional Center,  
Respondent, Appellee.

MOTION FOR CERTIFICATE OF APPEALABILITY

Now comes the Pro se Petitioner, who respectfully moves this Honorable Court to issue to him a Certificate of Appealability regarding the above-cited Court actions.

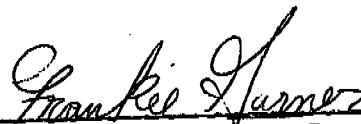
Petitioner cites local federal Rule 22.1(a) as well as, 28 U.S.C. §§ 2254, 2255 as authorities for the issuance of a Certificate of Appealability. Slack v. McDaniel, 529 U.S. 473 (2000)

On February 16, 2005, the United States Court of Appeals for the First Circuit issued an ORDER that petitioner's appeal from the denial of his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 could not go forward unless the petitioner was issued the required Certificate of Appealability by the District Court.

WHEREFORE, petitioner prays that this Honorable Court GRANT and issue such Certificate of Appealability as to allow him to move forward with this criminal matter.

Respectfully submitted,

Dated: 02/28, 2005

  
\_\_\_\_\_  
Frankie Garner, Pro se  
c/o S.B.C.C. PO Box 8000  
Shirley, MA 01464